

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

<b>Illinois Commerce Commission</b>	)	
<b>On Its Own Motion</b>	)	<b>Docket No. 06-0703</b>
	)	
<b>Revision of 83 Ill. Adm. Code 280</b>	)	

**TESTIMONY OF STEVEN Q. McKENZIE  
ON BEHALF OF THE  
THE CITY OF CHICAGO**

**February 25, 2011**



**SURREBUTTAL TESTIMONY OF STEVEN Q. MCKENZIE**

**Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

A. My name is Steven Q. McKenzie. My business address is 30 North LaSalle Street, Suite 700, Chicago, Illinois 60602.

**Q. FOR WHOM ARE YOU TESTIFYING?**

A. I am testifying on behalf of the City of Chicago (City). I am a Senior Assistant Corporation Counsel in the City's Law Department.

**Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS CASE?**

A. Yes. I presented direct testimony in this case on January 15, 2010. I submitted rebuttal testimony on October 12, 2010.

**Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

A. In this rulemaking proceeding, the Illinois Commerce Commission (the Commission) is considering revisions to its rules governing the bill collection practices of its regulated monopoly utilities – Part 280 of the Commission's rules. The Commission's Staff (Staff) submitted its proposed rewrite of Part 280 (Draft Rule) on September 11, 2009. In my direct and rebuttal testimony, I presented the concerns of various City departments regarding one section of the Draft Rule, specifically, Section 280.140 - Disconnection for Lack of Access to Multi-Meter Premises. Other parties have submitted additional comments on Staff's Draft Rule (and each other's testimony), and Staff submitted further

revisions of its Draft Rule in response. The principal utility parties providing testimony on the issues I discussed in my direct testimony were The Peoples Gas Light and Coke Company (Peoples Gas or PGL) and North Shore Gas Company (NS).<sup>1</sup> My testimony responds to the testimony of Peoples Gas witness James G. Robinson. I also comment on the inadequacy of Staff's proposed revisions to section 280.140 included in Staff's rebuttal testimony.

**Q. PLEASE SUMMARIZE YOUR CONCLUSIONS AFTER REVIEWING MR. ROBINSON'S TESTIMONY AND STAFF'S LATEST REVISION OF ITS DRAFT RULE.**

A. Even after the further revisions proposed by Staff to take account of the issues parties identified in their various testimonies, the City's concerns have not been addressed in any way that is meaningful for the many residents of multi-family housing in Chicago. Section 280.140 would still allow a utility to disconnect all tenants in a multi-unit building if one tenant is subject to disconnection for any of several reasons (usually for non-payment<sup>2</sup>), where the utility has not been able to gain access to the non-paying customer's meter to disconnect that customer. That approach to bill collection shifts the responsibility of one non-paying customer onto the shoulders of other customers who are current on their bills and who happen to reside in the same multi-unit building. It also

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<sup>1</sup> Because North Shore Gas Company does not provide service to Chicago residents, my comments will refer only to Peoples Gas.

<sup>2</sup> For the purposes of my surrebuttal testimony, I will refer to customers who are subject to disconnection as a non-paying customer. However, with the exception of customers who are accused of stealing gas, my comments apply equally to a customer who is subject to disconnection for any other reason.

drafts other building residents (involuntarily) into Peoples Gas's bill collection efforts by holding their utility service hostage, even when their bills are current.

**Q. HAS STAFF MODIFIED SECTION 280.140 SIGNIFICANTLY SINCE YOU SUBMITTED YOUR DIRECT TESTIMONY?**

A. Staff has made two welcome changes to that section of its Draft Rule. And Staff should be commended for those changes. One revision to the Draft Rule requires that the utility seek access by making a physical visit before disconnecting an entire building. The second increases the bill credit to paying customers who have had their utility service shut off so that the utility could(for example) shut off a non-paying customer who lives in the same building. However, those changes do not address the customer health and safety or property endangerment concerns discussed in my direct and rebuttal testimony.

**Q. HOW HAS PEOPLES GAS-NORTH SHORE RESPONDED TO THE CITY'S TESTIMONY EXPRESSING CONCERNS ABOUT THE EFFECTS OF SECTION 280.140 ON THE HEALTH AND SAFETY OF BUILDING RESIDENTS AND ON THE BUILDING ITSELF?**

A. The utility's first response in Mr. Robinson's testimony is to question the City's motives in opposing Section 280.140. Mr. Robinson's accusations are allegedly based mainly on the City's response to certain discovery from Peoples Gas-North Shore . Mr. Robinson asserts that the City declined to withdraw its opposition if the rule were amended to require verification that building residents have access to the meter to be disconnected. First, I would like to point out that the City was asked if it would "support" the rule, if

that single change were made; the City responded that it would not. I have attached the City's responses to Peoples Gas DRs 1.03 through 1.05 to this testimony (as City Ex. 3.01 - 3.03), to show the actual context and meaning of the City's response.

Second, in its response to that inquiry (City Ex. 3.03), the City reminded Peoples Gas that fixing this one defect in the rule would still leave other more critical problems in place, in particular, the inequities and potential hazards stemming from shifting bill collection responsibility to innocent tenants. Yet, Mr. Robinson concluded that the City's response "suggests that the City is more interested in eliminating the proposed section than trying to agree to solve its stated concerns." PGL-NS Ex. JR-2.0 at 41, LL 902-903. Mr. Robinson's accusation is baseless and does nothing to discredit the City's legitimate concerns about the health, safety and welfare of the City residents who would be directly affected by the utility's use of this draconian collection technique. Also, although Peoples Gas appears to acknowledge the reasonableness of the change it questioned the City about – *i.e.*, a requirement that the utilities verify that building residents can actually provide the access to meters the utility demands – Peoples Gas-North Shore have not supported that change in their testimony.

The proposed rule would expand Peoples Gas's authority for shut-offs of entire buildings, increasing the potential for making innocent people suffer due to the utility's decision or preference not to pursue other avenues of bad debt collection. I explained these

undesirable effects in my responses to People Gas data requests 1.04 and 1.05, which are attached as City Ex. 3.01 and 3.02.

**Q. YOU MENTIONED OTHER DEBT COLLECTION APPROACHES. WHAT OTHER APPROACHES DO YOU MEAN?**

A. Mr. Robinson implies that without the proposed rule allowing utilities to terminate an entire building for one person's debt, the utility would have no other means to collect those bills. Mr. Robinson does not explain to the Commission that the utility company has available and *could* pursue all the normal debt collection practices employed by non-utility companies. For example, Part 280 addresses only non-judicial remedies; Peoples Gas could bring a lawsuit seeking both monetary and injunctive relief (*viz.* access to the meter) against the debtor. This narrow, specific, and legally acceptable method of dealing with debt collection or meter safety situations is the approach the City must take in dealing with the plight of residents in buildings without heat. Individual tenants' rights must be respected, even when that requires governments or utilities to follow a more indirect course.

That Peoples Gas fails to discuss its judicial remedies in the analysis it gives the Commission suggests that Peoples Gas places an easy (for the utility) cure for its collection problem ahead of its customers' rights or its obligation to serve its paying customers.

**Q. IS THE CITY INDIFFERENT TO PEOPLES GAS' PROBLEMS WHERE CITY RESIDENTS ARE CONCERNED?**

A. Of course not. Mr. Robinson fails to acknowledge that the City works cooperatively with Peoples Gas to deal with numerous buildings that have gas diversion or tampering detected. In addition, the City files hundreds of cases each winter (October thru April) in circuit court to appoint a limited receiver to restore gas services to properties. Sometimes the City must intervene because of gas diversions (*i.e.*, gas theft) by the owner. The City expends its resources to cure these situations so that the tenants involved are not harmed. Peoples Gas benefits when the receiver acts to ensure tampering ceases, diversions are ended, and the utility is paid. Further, for the last three years, the City has worked cooperatively with Peoples Gas to identify 4-unit or larger buildings where gas service has been terminated during the spring and summer. The City, at its own cost, sends out 500-600 letters warning the owners about possible gas utility service termination and about the potential for court action if service is not restored before the winter heating season. The City is sensitive to Peoples Gas's issues, but is concerned that the health, safety and welfare of the citizens of Chicago are not subordinated to utilities' desire for radical changes to Part 280 rules that would benefit the utilities at the expense of the City and the citizens.

**Q. DOES PEOPLES GAS RECOGNIZE THE REALITY OF THE CITY'S CONCERN THAT THE PROPOSED RULE CHANGE COULD SUBJECT CHICAGO RESIDENTS TO DANGERS AND HAZARDOUS CONDITIONS?**



- A. It appears that the utility does recognize the danger I discussed in my direct testimony. Mr. Robinson's rebuttal testimony acknowledges that "lack of utility service in the City of Chicago can be hazardous, even life-threatening." PGL-NS Ex. 2.0 at 41, LL 911-912; at 42, LL 935. But, other than restating a summary of the *current* rules, his rebuttal does not address the fact that a lack of heat to a property can have a negative effect on both the occupants and the structure or the fact that the proposed punishment of innocent building residents to collect a debt will increase risks to the health and safety of those innocent people. More to the point, Mr. Robinson offers no explanation or modification to the proposed rule that details how the proposed collection approach could avoid those dangers.

**Q. MR. ROBINSON REFERS TO THE LAYERS OF SAFEGUARDS IN SECTION 280.140. WHAT IS YOUR ASSESSMENT OF THOSE SAFEGUARDS?**

- A. The layers of safeguards to which he refers have not been modified since I submitted my direct testimony. They were inadequate then, and they are inadequate now. Based on Mr. Robinson's testimony, some of those safeguards appear to be less effective than originally suggested. Mr Robinson's testimony states that "Most significantly, Peoples Gas and North Shore would restore service to such customers on the same day that they provide the necessary access," if the rule were adopted. *Id.* at 42, LL 928. He also reports that he expects the proposed Rule could be implemented without undue impact on customers. *Id.* at 44, LL 975-978.

**Q. DOES PEOPLES GAS PROVIDE ANY SUPPORT FOR ITS ASSURANCES THAT CUSTOMERS WOULD NOT BE UNDULY AFFECTED?**

A. No. In fact, Mr. Robinson contradicts this assurance of immediate reconnection and little customer impact in his testimony opposing shorter service activation periods. There he testifies that Peoples Gas is currently barely able to meet reconnection demands in certain periods. “Accelerating the time line requirement is simply unworkable.” *Id.* at 8, LL 164-165. The periods described are the months of September, October and November – months when utilities escalate their collection efforts (and would presumably use expanded shut-off authority) ahead of the winter disconnection moratorium. This burden, Mr. Robinson admits, is worse during the months of September through November, because LIHEAP funds become available and “This increased demand coupled with the cold weather affects the Companies’ ability to respond.” *Id.* at 9-10, LL190-191. According to Mr Robinson, during those months, “there is a tremendous demand for services.” *Id.* at 9, LL 174-175.

**Q. WHAT IS YOUR ASSESSMENT OF THIS INCONSISTENT TESTIMONY, WHEN EVALUATING THE POSSIBLE IMPACTS ON INNOCENT, BILL-PAYING CUSTOMERS WHO HAPPEN TO RESIDE IN A MULTI-UNIT BUILDING WITH A UTILITY CUSTOMER WHO HAS NOT PAID HIS BILL?**

A. This contradictory testimony suggests very strongly that proposed Section 280.140 cannot be implemented safely, with expedited reconnection assured. Peoples Gas states on numerous occasions that this proposed rule could be implemented safely and without undue impact, because utilities would give these situations “priority restoration.” *Id.* at

42, LL 927. Yet, today, even without the added requirement for “priority restoration,” Peoples Gas is “not always able to provide service within a seven day time period.” *Id.* at 10, LL 202-203. It is very difficult to take Mr. Robinson’s assurances seriously in light of such contradictory testimony.

**Q. DOES IT SEEM LIKELY THAT PEOPLES GAS WOULD BE ABLE TO ADJUST ITS RESOURCES OF PRACTICES TO ACCOMMODATE INCREASED CONNECTION AND RECONNECTION DEMANDS EASILY?**

A. From the descriptions of the work necessary to reconnect gas service, it appears that the changes necessary to avoid undue customer impacts are inconsistent with Peoples Gas’s and other utilities’ opposition to new costs to implement revised rules. Mr. Robinson states that it takes 45 minutes to complete a safety check on an apartment being reconnected. *Id.* at 10 -11, LL 204-216. Reconnection on the same day can only be accomplished with more technical personnel available to deploy to the multiple units in an apartment building. Peoples Gas has not even mentioned the possibility of adding personnel for this purpose.

In an urban setting like Chicago, the promise of priority restoration is essentially an empty one. In Chicago there are condominium and multi-unit residential rentals that have individual forced air furnaces, and these buildings are not simply four-flat or six-flat properties. Some buildings contain 36 units, 48 units, 60 units or even more. As a practical matter, the size of some of these properties makes the promise of “priority

restoration” (same day) impossible to keep – even if Peoples Gas neglected its other service requirements. For example, if Peoples Gas used the proposed rule to terminate a 48-unit property because one tenant had not paid his bill, it would take a minimum of 36 technician-hours for the company to complete the safety check on all 48 units. Unless Peoples Gas abandons its own safety protocols in these cases, the time frame for restoration of services is unlikely to be the same day priority Peoples Gas describes in its testimony.

**Q. MR. ROBINSON CHALLENGES YOUR ASSERTION THAT THE PROPOSED RULE COULD STRAIN THE CITY’S RESOURCES. HOW DO YOU RESPOND?**

A. Mr. Robinson’s challenge begins with a series of assumptions for which he provides no evidence: that the costs associated with disconnects for meter readings are the same as disconnects for unpaid bills; that Peoples Gas actually disconnects buildings for that purpose (instead of estimating bills); and that its disconnections (for meter readings or inspections) have been comparable over a 30-year period. Based on this, he suggests that the City should have quantified the costs the proposed new disconnection authority would cause the City to incur, and that, because it could not, its concerns should be dismissed. When the City responds to a heat emergency situation, the City does not always know whether Peoples Gas caused it with a disconnection. And Peoples Gas has never provided a comprehensive list of each of those terminations for the City to evaluate if and how the City responded to those situations.

In addition, the consequences of discontinuing gas service about which the City is most concerned are not readily quantified – the risks and effects of no heat on: newborns and infants, who have little ability to regulate their body heat and would require extra clothes and swaddling; an inability to serve a hot meal; school aged children forced to do homework wearing gloves and mittens; elderly individuals forced into shelters or family members's homes; and bed-bound disabled individuals suffering through cold or placed into hospitals or institutions. These are all costs that would be externalized under the proposed rule.

During this rulemaking process, Peoples Gas has failed to produce any evidence that other collection means – less costly to the City, the public and other consumers – are ineffective or unavailable. Instead it attempts to shift the burden of identifying less onerous collection methods to the customers who would be affected by the new rule. *Id.* at 43, LL 941-953. The City weighs a few delinquent bills (which has been unwelcome, but manageable, for utilities) as less than the potential impact of building shut-offs on the health and safety of innocent bill-paying tenants and families in affected buildings.

**Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

A. Yes.